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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

)

Petition of Fitchburg Gas and Electric Light Company for)

Approval of Its Integrated Gas Resource Plan for the) D.T.E. 00-42

Years 2000 through 2004.)

August 17, 2000

HEARING OFFICER RULING ON MOTION OF FITCHBURG GAS AND ELECTRIC LIGHT COMPANY FOR
PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION

INTRODUCTION

On May 1, 2000, Fitchburg Gas and Electric Light Company ("Fitchburg" or "Company") filed its long-range forecast and supply plan for the period 2000 to 2004 with the Department of Telecommunications and Energy ("Department") for review and approval. A public hearing and a procedural conference were held on June 23, 2000; there were no petitions for leave to intervene. Subsequently, the Department issued two sets of information requests to the Company, on July 12, 2000, and August 1, 2000.

On August 15, 2000, Fitchburg filed with its responses to the second set of information requests a Motion for Protective Treatment of Confidential Information ("Motion"). The Motion requests that Department (1) protect from public disclosure certain prices, dates and volumes regarding its purchased gas supplies, contained in responses to Information Requests DTE 2-10, 2-16, and 2-18, and any similar information that may be solicited in the proceeding; and (2) include the redacted version of the Company's responses in the public record.

II. STANDARD OF REVIEW

Information filed with the Department may be protected from public disclosure pursuant to G.L. c. 25, § 5D, which states in part that

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the [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

G.L. c. 25, § 5D permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. See G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth. G.L. c. 25, § 5D establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute "trade secrets, confidential, competitively sensitive or other proprietary information"; second, the party seeking protection must overcome the statutory presumption that all such information is public information by "proving" the need for its non-disclosure; and third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need. G.L. c. 25, § 5D.

Previous Department applications of the standard set forth in G.L. c. 25, § 5D reflect the narrow scope of this exemption. For instance, in *Fall River Gas Company, D.T.E. 99-88*, Hearing Officer Ruling (March 20, 2000); *The Berkshire Gas Company, 98-110*, Hearing Officer Ruling (Feb. 8, 1999); and *Colonial Gas Company, D.P.U. 96-18*, at 4 (1996), the Department denied all requests for exemption of terms and conditions of gas supply contracts from public disclosure, except for those terms pertaining to pricing. See also *Standard of Review for Electric Contracts, D.P.U. 96-39*, at 2, Letter Order (Aug. 30, 1996) (Department will grant exemption for electricity contract prices, but "[p]roponents will face a more difficult task of overcoming the statutory presumption against other terms, such as the identity of the customer"). A proponent of a request for confidentiality must substantiate why such a request meets the requirements of G.L. c. 25, § 5D. A mere recitation that particular data is "competitively sensitive" or otherwise confidential is insufficient to meet that burden of proof. Requests for protective treatment have not been and will not be automatically granted by the Department. A party's willingness to enter into a nondisclosure agreement does not resolve the question of whether the response should be granted protective treatment.

III. MOTION FOR PROTECTIVE TREATMENT

A. Position of Fitchburg

In its Motion, Fitchburg argues that disclosure of particular prices paid and

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quantities and dates of purchase will adversely affect the Company and its ratepayers because it will undercut the Company's ability to bargain for the best prices and terms (Motion at 1-2). Disclosure, Fitchburg argues, would reveal Company purchasing strategies, thus weakening its future bargaining position; and would discourage suppliers from making agreements favorable to Fitchburg, as public knowledge of such agreements could decrease suppliers' bargaining leverage in other negotiations (id. at 2). Fitchburg further asserts that lack of confidentiality for the supplier and pricing information could have a chilling effect on the marketplace by dissuading gas suppliers, concerned about their competitive position in the national market, from marketing supplies in Massachusetts (id.).

B. Analysis and Findings

Fitchburg has met its burden of proof regarding pricing information in responses to Information Requests DTE 2-10, 2-16, and 2-18. Disclosure of specific pricing information could put the Company at a competitive disadvantage when negotiating future contracts. Those portions of responses to information requests that refer to actual prices may be redacted from the public file.

However, the Company has failed to meet its burden concerning those portions of information request responses that reveal information other than prices that the company will pay for the commodity. Fitchburg has failed to prove its allegation that disclosure of volumes and dates of purchase will weaken its bargaining position or have a chilling effect on the marketplace. Therefore, the Company's request to protect supply volumes and dates is denied. The Company, accordingly, shall file versions of its responses to the second set of information requests that redact only the actual price terms.

The Company's Motion seeks protective treatment for "supply and pricing information contained in its data responses and any similar information that may be solicited in this proceeding" (Motion at 3). The Department evaluates requests for confidential treatment on a case-by-case basis. Order on Standard of Review and Confidentiality, D.P.U. 93-187/188/189/190, at 22 (1994). Therefore, this Hearing Officer Ruling does not prospectively apply to information that has not yet been solicited by the Department.

Under the provision of 220 C.M.R. § 1.06 (6)(d)(3), any aggrieved party may appeal this ruling to the Commission by filing a written appeal with supporting documentation by August 23, 2000. A copy of this ruling must accompany any appeal. A response to any appeal must be filed by August 30, 2000.

Extensions to the deadlines in this ruling may be made for good cause shown.

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August 17, 2000 _____

Date Marcel I a M. Hi ckey

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cc: Mary Cottrell , Secretary